

Case Nos. 17-17478, 17-17480

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CITY AND COUNTY OF SAN FRANCISCO,)	
Plaintiff-Appellee,)	
)	No. 17-17478
v.)	
)	U.S. District Court for Northern
DONALD J. TRUMP, President of the United States, et al.,)	California, San Francisco
Defendants-Appellants.)	No. 3:17-cv-00485-WHO
<hr/>		
COUNTY OF SANTA CLARA,)	
Plaintiff-Appellee,)	No. 17-17480
)	
v.)	U.S. District Court for Northern
)	California, San Francisco,
DONALD J. TRUMP, et al.,)	No. 3:17-cv-00574-WHO
Defendants-Appellants.)	

**BRIEF OF AMICUS CURIAE 56 CITIES AND COUNTIES
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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INTEREST AND IDENTITY OF *AMICI CURIAE*

The following 56 Cities and Counties (“Amici”) file this brief under Rule 29(a) of the Federal Rules of Appellate Procedure:¹

County of Alameda, California
City of Albany, New York
City of Austin, Texas
City of Berkeley, California
City of Cathedral City, California
City of Chelsea, Massachusetts
City of Chicago, Illinois
City of Cincinnati, Ohio
Cook County, Illinois
City of Davis, California
City and County of Denver, Colorado
City of Eugene, Oregon
City of Fremont, California
City of Gary, Indiana
City of Hyattsville, Maryland
City of Ithaca, New York
King County, Washington
City of Lansing, Michigan
City of Lawrence, Massachusetts
County of Los Angeles, California
City of Los Angeles, California
City of Madison, Wisconsin
City of Malibu, California
County of Marin, California
City of Menlo Park, California
City of Minneapolis, Minnesota
County of Monterey, California

¹ The Department of Justice, the City and County of San Francisco, and the County of Santa Clara consented to the filing of this brief. Accordingly, a motion for leave to file is unnecessary. Fed. R. App. P. 29(a)(2). No party or party’s counsel authored this brief in whole or in part, and no party or person contributed money towards its preparation and submission. Fed. R. App. P. 29(a)(4).

City of Morgan Hill, California
Metropolitan Government of Nashville, Tennessee
City of New Haven, Connecticut
City of New Orleans, Louisiana
City of Newark, New Jersey
City of Oakland, California
City of Philadelphia, Pennsylvania
City of Portland, Oregon
Town of Portola Valley, California
Municipality of Princeton, New Jersey
City of Providence, Rhode Island
City of Sacramento, California
City of Saint Paul, Minnesota
City of Salinas, California
Salt Lake City, Utah
City of Santa Ana, California
City of Santa Clara, California
City of Santa Cruz, California
County of Santa Cruz, California
City of Santa Fe, New Mexico
City of Santa Monica, California
City of Seattle, Washington
City of Somerville, Massachusetts
County of Sonoma, California
Travis County, Texas
City of Trenton, New Jersey
City of Tucson, Arizona
City of Union City, New Jersey
City of West Hollywood, California

Amici have an interest in this appeal, which concerns the District Court’s order permanently enjoining Section 9(a) of President Trump’s Executive Order 13768 (the “Executive Order”). President Trump’s threat to use the Executive Order to defund sanctuary jurisdictions is a weapon not only against the City and County of San Francisco (“San Francisco”) and the County of Santa Clara (“Santa

Clara”) but against *all* local governments, including Amici. Moreover, Amici represent the interconnected web of local governments that span our nation. A cut in funding to any jurisdiction results in greater burdens on the services provided by other jurisdictions. Amici therefore have an interest in addressing this Court on the importance of maintaining the nationwide injunction in this case.

Amici also have an interest in maintaining control over a core realm of local governance—the setting of enforcement priorities for local police and sheriff’s departments—consistent with the federalism principles inherent in our Constitution. The Executive Order threatens these basic Constitutional protections in a manner uniform to Amici.

SUMMARY OF ARGUMENT

Amici represent 56 cities and counties from 23 states across the country, home to 29,085,854 residents. Amici’s individual policies regarding 8 U.S.C. § 1373 and/or Immigration and Customs Enforcement (“ICE”) civil detainer requests are diverse. Some Amici consider themselves to be “sanctuaries,” while others do not. But all agree that the Executive Order violates the Constitution. Amici therefore urge this Court to affirm the District Court’s nationwide injunction of the Executive Order.

The nationwide injunction is necessary and appropriate for three reasons. *First*, the District Court has broad discretion to frame the scope of injunctive relief,

and exercised that discretion to enter a nationwide injunction. The District Court’s order is proportional to the constitutional violation and supported by ample precedent. *Second*, Article III does not limit the District Court’s discretion to fashion the scope of injunctive relief, even where that relief benefits parties, like Amici, that are not before the court. *Third*, adequate relief cannot be provided to either Santa Clara or San Francisco without a nationwide injunction, because local governments are interconnected and interdependent.

Amici also write to express the importance of maintaining a nationwide injunction. The Executive Order threatens to usurp Amici’s control over a core realm of local governance—the setting of enforcement priorities for local police and sheriff’s departments. Without the nationwide injunction, the unconstitutional Executive Order could be used as a tool to coerce the nation’s local jurisdictions into becoming de facto agents of the Executive Branch.

For these reasons, as set forth below, Amici respectfully submit that the District Court’s decision should be upheld.

ARGUMENT

I. The Nationwide Injunction Is Necessary and Appropriate

A. Courts have Broad Discretion to Frame Injunctive Relief, and the District Court Exercised that Discretion Properly

Federal courts possess “broad powers and wide discretion to frame the scope of appropriate equitable relief.” *Sec. & Exch. Comm’n v. United Fin Grp., Inc.*,

474 F.2d 354, 358-59 (9th Cir. 1973). This power is not limited by a court's geographic boundaries. "Once a court has obtained personal jurisdiction over a defendant, the court has the power to enforce the terms of the injunction outside the territorial jurisdiction of the court, including issuing a nationwide injunction." *United States v. AMC Entm't, Inc.*, 549 F.3d 760, 770 (9th Cir. 2008). See also *Missouri v. Jenkins*, 515 U.S. 70, 88 (1995) ("[T]he nature of the . . . remedy is to be determined by the nature and scope of the constitutional violation.") (citation omitted); *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (noting that courts should consider "the extent of the violation," not the "geographical extent" of the plaintiffs, in fashioning appropriate injunctive relief); *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015) ("[Judicial] power is not limited to the district wherein the court sits but extends across the country. It is not beyond the power of a court, in appropriate circumstances, to issue a nationwide injunction.") *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016).

As set forth below, the nationwide injunction is an appropriate exercise of the District Court's discretion.

B. Article III Does Not Limit a Court’s Discretion to Fashion Appropriate Injunctive Relief

The federal government argues that San Francisco and Santa Clara lack Article III standing to seek a nationwide injunction of the Executive Order.² The federal government’s arguments are wrong and are contradicted by binding Supreme Court and Ninth Circuit precedent.

Article III does not require that injunctive relief benefit only the plaintiffs. To the contrary, it is well-settled that when a federal government policy is unlawful on its face, courts can and should enjoin that policy to the benefit of individuals not before the court. *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584, 2604-2605 (2015) (affirming injunction restraining state prohibitions on same-sex marriage, in suit brought by individual same-sex couples); *Wisconsin v. Constantineau*, 400 U.S. 433, 439 (1971) (affirming invalidation of state law requiring retailers to post lists of individuals to whom liquor could not be sold, in suit brought by individual whose name appeared on a list); *Earth Island Inst. v.*

² The federal government appears to concede that if the District Court’s construction of the Executive Order is valid—which it is—then San Francisco and Santa Clara have Article III standing to seek an injunction of the Executive Order as to themselves. *See* U.S. Br. at 29 (“[A]ssuming . . . that this Court were to agree with the district court’s reasoning, it would be necessary to vacate the injunction insofar as it extends to entities other than the plaintiffs in this case.”). Amici therefore address only the federal government’s contention that Article III limits San Francisco’s and Santa Clara’s ability to obtain injunctive relief that benefits other jurisdictions, like Amici.

Ruthenbeck, 490 F.3d 687, 699 (9th Cir. 2007) (affirming nationwide injunction of regulations exempting certain timber sales from federal notice and comment processes, in suit brought by individual environmental organizations) *rev'd on other grounds*, 555 U.S. 488 (2009). *See also Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989) (“When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed.”).³

Indeed, just last year the Supreme Court left in place portions of a nationwide injunction against a uniform federal policy, over the objections of dissenting Justices who made the same arguments the federal government makes here. *See Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2090 (2017) (Thomas, J. dissenting) (“[A] court’s role is to provide relief only to claimants”) (internal quotation marks and citation omitted). This Court also recently

³ Although claims challenging unlawful federal rules or policies often arise under the Administrative Procedure Act, the same principle applies here. *See, e.g., Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040, at *2 (W.D. Wash. Feb. 3, 2017), *appeal dismissed* 2017 WL 3774041 (9th Cir. Mar. 8, 2017); *Washington v. Trump*, 847 F.3d 1151, 1166-1167 (9th Cir. 2017), *reconsideration en banc denied* 853 F.3d 933 (9th Cir. 2017), *reconsideration en banc denied* 858 F.3d 1168 (9th Cir. 2017), *cert. denied sub nom.* 138 S. Ct. 448 (2017); *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015), *aff’d by an equally divided Court*, 136 S. Ct. 2271 (2016); *cf. City of Carmel-By-The-Sea v. United States Dep’t of Transp.*, 123 F.3d 1142, 1166 (9th Cir. 1997) (“[U]nder certain circumstances, Executive Orders, with specific statutory foundation, are treated as agency action and reviewed under the Administrative Procedure Act.”).

upheld a nationwide injunction against a different executive order, because “[n]arrowing the injunction to apply only to Plaintiffs would not cure the statutory violations identified, which in all applications” violated federal law. *Hawaii v. Trump*, 859 F.3d 741, 788 (9th Cir. 2017), *vacated as moot*, 874 F.3d 1112 (9th Cir. 2017). Numerous courts around the country have applied this principle to issue or affirm nationwide injunctions. *See, e.g., Int’l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539, 565-566 (D. Md.) (preliminarily enjoining enforcement, in part, of executive order on a nationwide basis), *vacated as moot*, 138 S. Ct. 353 (2017); *Washington v. Trump*, No. C17-141JLR, 2017 WL 462040, at *2 (W.D. Wash. Feb. 3, 2017) (preliminarily enjoining implementation of executive order nationwide); *Washington v. Trump*, 847 F.3d 1151, 1166-67 (9th Cir. 2017) (holding that federal government had failed to demonstrate it was likely to succeed on claim that nationwide injunction was overbroad); *Texas v. United States*, 809 F.3d 134, 187-188 (5th Cir. 2015) (affirming nationwide preliminary injunction of directive from Secretary of Department of Homeland Security), *aff’d by an equally divided Court*, 136 S. Ct. 2271 (2016).

The cases on which the federal government relies do not address the relevant issue: a district court’s broad remedial power to fashion the scope of injunctive relief. In *McKenzie v. City of Chicago*, for example, the plaintiffs lacked Article III standing to seek an injunction *even for themselves*, because neither plaintiff

owned a building that was at risk of demolition under the challenged city ordinance. 118 F.3d 552, 554 (7th Cir. 1997). *McKenzie* therefore stands for the unremarkable (and unchallenged) premise that a plaintiff must adequately allege a threatened or actual injury to seek injunctive relief.⁴ The federal government's other legal authority is equally unavailing.⁵

As in each of these cases, nationwide relief is appropriate because the Executive Order purports to apply to *all* jurisdictions receiving federal funding and harms *all* jurisdictions in the same unconstitutional way. San Francisco's and Santa Clara's challenges to the Executive Order are not premised on any unique applications as to them, but rather to the Executive Order itself. *See Santa Clara Br.* at 42 ("Defendants have never argued, much less submitted evidence establishing, that the merits of these constitutional claims differ across jurisdictions."); *San Francisco Br.* at 9-27 (arguing that the Executive Order unlawfully threatens all sanctuary jurisdictions with the loss of federal funds). The

⁴ The same is true of several of the federal government's other cited authorities. *See Alvarez v. Smith*, 558 U.S. 87, 92-93 (2009); *Monsanto Co. v. Geertsen Seed Farms*, 561 U.S. 139, 163 (2010); *Summers v. Earth Island Inst.*, 555 U.S. 488, 494-95 (2009).

⁵ *Zepeda v. U.S. I.N.S.*, 753 F.2d 719 (9th Cir. 1983) predated *Bresgal v. Brock*, 843 F.2d 1163, 1169 (9th Cir. 1987), where this Court clarified that "[t]here is no general requirement that an injunction affect only the parties in the suit." And *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975) expressly recognized that Article III standing is not negated even where "the court's judgment may benefit others collaterally."

Executive Order thus constitutes the type of uniform and widespread institutional policy or practice that courts can—and regularly do—enjoin as to all affected. *See* Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1771 (3d ed. 2017) (noting when a court “strike[s] down a statute, rule, or ordinance on the ground that it is constitutionally offensive,” relief “generally will benefit not only the claimant but all other persons subject to the practice or the rule under attack”).

C. A Nationwide Injunction Is Necessary to Provide Adequate Relief

This Court has made clear that an injunction is “not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—*if such breadth is necessary to give prevailing parties the relief to which they are entitled.*” *Bresgal v. Brock*, 843 F.2d 1163, 1170-1171 (9th Cir. 1987) (emphasis in original). In *In Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664 (9th Cir. 2011), this Court reiterated that “there is no bar against nationwide relief in the district courts or courts of appeal, even if the case was not certified as a class action, if such broad relief is necessary to give prevailing parties the relief to which they are entitled.”⁶

⁶ Nationwide injunctive relief was inappropriate in *Los Angeles Haven Hospice* because of concerns about “the great uncertainty and confusion that would likely flow from a nationwide injunction,” which do not exist here. 638 F.3d at 665. There, plaintiffs challenged a regulation that had been in place for decades, the removal of which would “disrupt the administration of the Medicare program” and “create great uncertainty for the government, Medicare contractors, and the hospice providers.” *Id.* Those concerns do not exist here because San Francisco

The nationwide injunction is necessary to provide adequate relief to San Francisco and Santa Clara. Even if the Executive Order was enjoined as to only Santa Clara and San Francisco, both jurisdictions would still be harmed if the federal government denied other jurisdictions the money they need to properly operate. President Trump’s threat to use the Executive Order to “defund” sanctuary jurisdictions is a “weapon” not only against Santa Clara and San Francisco, but against every jurisdiction in the interconnected web of local governments that span our nation.⁷ Providing complete relief to any one jurisdiction therefore requires relief to all jurisdictions.

No local jurisdiction is an island unto itself: free movement of persons among cities and counties is not only a fundamental right,⁸ but also a basic facet of modern life. A cut in funding to one jurisdiction results in greater burdens on the services provided by nearby jurisdictions. Local governments provide the vast majority of essential services to people living in this country. Amici use federal

and Santa Clara challenged the Executive Order before enforcement, such that an injunction preserves (not upends) the status quo.

⁷ In the immediate aftermath of the Executive Order, the President told an interviewer that “defunding” is a “weapon” against sanctuary jurisdictions: “I don’t want to defund anybody. I want to give them the money they need to properly operate as a city or a state. If they’re going to have sanctuary cities, we may have to do that. Certainly that would be a weapon.” SER 229.

⁸ *United States v. Guest*, 383 U.S. 745, 758 (1966) (“[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution.”).

funding (received directly, or through other jurisdictions, such as counties and states) to fund essential social services, such as emergency health care to the uninsured, disaster relief efforts, and programs that feed the hungry. “City government is where the rubber meets the road. Cities pave our streets, fight crime and fires, prepare us for disaster, bring water to our taps, take our trash away, build and maintain our parks—the list goes on and on. These services cost money.”

Tex. Mun. League, *How Cities Work*, 1 (2013), available at <https://www.tml.org/HCW/HowCitiesWork.pdf>.

If either San Francisco or Santa Clara is targeted pursuant to the Executive Order, neighboring local governments will suffer a greater demand for their services, and suffer consequences to their residents if either San Francisco or Santa Clara is unable to properly operate. By the same token, if San Francisco and Santa Clara receive individual carve-outs, but the Executive Order remains in effect as to the rest of the country, San Francisco and Santa Clara will suffer a greater demand for their services and continue to be harmed by the unconstitutional Executive Order. San Francisco and Santa Clara may also receive less funding from sources that would continue to be impacted by the Executive Order, such as the State of California. *See Santa Clara Br.* at 42 n.23.

Accordingly, only a nationwide injunction can provide San Francisco and Santa Clara adequate relief.

II. The Executive Order Interferes with a Core Realm of Local Governance for Amici

The Supreme Court has long recognized that “[t]he Constitution requires a distinction between what is truly national and what is truly local.” *United States v. Morrison*, 529 U.S. 598, 617-618 (2000). It is the states and local governments, not the federal government, that “can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few. . . .” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 535 (2012). This unique domain of authority, which “the Founders denied the National Government and reposed in the States,” is the “police power” *Morrison*, 529 U.S. at 618.

By entrusting this police power to local and state governments, the Founders “ensured that powers which in the ordinary course of affairs, concern the lives, liberties, and properties of the people were held by governments more local and more accountable than a distant federal bureaucracy.” *Nat’l Fed’n of Indep. Bus.*, 567 U.S. at 536 (internal quotation marks and citation omitted). Because state and local governments are better positioned to carry out the daily tasks of governance, “[o]nce we are in this domain of the reserve power of a State, we must respect the wide discretion on the part of the legislature in determining what is and is not necessary.” *East N.Y. Sav. Bank v. Hahn*, 326 U.S. 230, 233 (1945) (internal quotation marks and citation omitted).

The Executive Order interferes with that discretion in a core realm of local governance: the setting of enforcement priorities for local police and sheriff's departments. There is "no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims." *Morrison*, 529 U.S. at 618. Local law enforcement authorities are entrusted to carry out that role, but the Executive Order impairs their ability to do so: it deprives local governments of the power to make policy judgments about local safety needs, and replaces these local judgments with the President's unilateral preferences. Even Congress, pursuant to its exclusive legislative power, could not use that power to so intrude on state and local prerogatives. *See New York v. United States*, 505 U.S. 144, 162 (1992) ("[T]he Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions."). It follows, then, that the President may not do so by executive fiat, particularly when doing so conflicts with duly enacted congressional appropriations that contain none of the conditions the Executive Order imposes. *Cf. In re Aiken Cnty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013) ("[E]ven the President does not have unilateral authority to refuse to spend the funds.").⁹

⁹ Thus, the Executive Order also violates the separation of powers, as the President has no Congressional authorization to impose the spending limits. *See* U.S. Const. art. I, § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes, Duties,

Amici respectfully submit that decisions as to whether local law enforcement authorities should deploy their limited resources to collect information related to immigration status or share that information with federal authorities must rest with local governments and the States. Local authorities are best positioned to assess their enforcement priorities, weigh the costs and benefits of different options, and make judgments about what will best promote the safety of their communities. Moreover, local officials ultimately assume the burden of, and can be held accountable to their communities for, their policy choices. *Cf. New York*, 505 U.S. at 169 (“[W]here the Federal Government directs the States to regulate, it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision.”); *Printz v. United States*, 521 U.S. 898, 920 (1997) (“The Constitution thus contemplates that a State’s government will represent and remain accountable to its own citizens.”).

Based on decades of on-the-ground experience, some jurisdictions have concluded that their mission of preventing crime and protecting victims can be thwarted by certain activities that amount to enforcement of federal immigration laws by local officials, such as collecting and producing information about immigration status from persons who are victims or witnesses of crimes. *See, e.g.,*

Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States . . .”).

Cal. TRUST Act, 2013 Cal. Legis. Serv. Ch. 570 (A.B. 4) § 1(d) (finding that such activities “harm community policing efforts because immigrant residents who are victims of or witnesses to crime, including domestic violence, are less likely to report crime or cooperate with law enforcement when any contact with law enforcement could result in deportation”).¹⁰ Courts have also recognized that compelled disclosure of immigration status may result in “countless acts of illegal and reprehensible conduct [going] unreported,” as victims or witnesses may be chilled from reporting or complaining about unlawful conduct. *See, e.g., Rivera v.*

¹⁰ *See also* Governor of Ill. Pat Quinn, Exec. Order Establishing Governor’s New Americans Trust Initiative, 1 (Jan. 5, 2015), *available at* http://www.catrustact.org/uploads/2/5/4/6/25464410/quinn_executive_order2015-02-1.pdf (finding that “community policing efforts are hindered when immigrant residents who are victims of or witnesses to crime, including domestic violence, are less likely to report crime or cooperate with law enforcement out of fear that any contact with law enforcement could result in deportation”); Resolution dated May 21, 2012, City of Amherst, Mass., *available at* http://www.catrustact.org/uploads/2/5/4/6/25464410/amherst_resolution_2012.pdf (finding that federal immigration cooperation “has already been shown to increase distrust and fear of local authorities, making many immigrants afraid to be witnesses and report crimes against themselves and others”); City & Cnty. of San Francisco, “Due Process for All and Sanctuary” Ordinance, § 12I.1 (Jun. 7, 2016), *available at* http://www.catrustact.org/uploads/2/5/4/6/25464410/sf_due_process_ordinance_2016.pdf (finding that “civil immigration detainers and notifications regarding release undermine community trust of law enforcement by instilling fear in immigrant communities of coming forward to report crimes and cooperate with local law enforcement agencies”); King Cnty., Ordinance 17706, § 1(A) (Dec. 3, 2013), *available at* http://www.catrustact.org/uploads/2/5/4/6/25464410/king_co_ice_detainer_requests_ordinance_12-2-13.pdf (noting that “[t]estimony established that the threat of deportation for the immigrant community is so strong that many persons are afraid to report domestic violence or witnessed crime”).

NIBCO, Inc., 364 F.3d 1057, 1065 (9th Cir. 2004) (preventing employer defendant from discovering immigration status of Title VII plaintiffs alleging national origin discrimination).

Amici do not address the independent conclusion of each Amicus jurisdiction on this issue, but collectively they contend that each locality must be able to independently evaluate its own needs and set its own priorities according to its judgment. By upending the independent judgment of local officials responsible for “the suppression of violent crime and vindication of its victims,” *Morrison*, 529 U.S. at 618, the Executive Order intrudes upon a power reserved for the states and local governments, and threatens to undermine the mission of local law enforcement.

CONCLUSION

For the foregoing reasons, Amici respectfully submit that the decision below should be affirmed.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure (“FRAP”) 32(a)(7)(B) because this brief contains 4,122 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of FRAP 32(a)(5) and the type style requirements of FRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in Times New Roman type style, 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 12, 2018. All participants in this case are registered CM/ECF users, and will be served by the appellate CM/ECF system.

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